

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3936 OF 2005

IN

CRIMINAL APPEAL NO. 583 OF 2005

Shri.Vijaykumar Prakash  
Jadhav

..Applicant

Vs.

State of Maharashtra

..Respondents

...  
Smt.Poonam Bhosale Advocate for Applicant  
Mr. M.S.Mhambaray A.P.P. for the State  
...

**CORAM: SMT.V.K.TAHILRAMANI, J.**

**DATE : JULY 6, 2005**

**P.C.**

1. Heard both sides.
2. The applicant has been convicted under Section 376 of IPC for committing rape on P.W.1 Savita.
3. The learned A.P.P. has submitted that P.W.1 Savita was below 16 years of age and whether Savita consented or not to sexual intercourse, is immaterial as even if Savita consented to sexual

inter course, it would be a case of rape. On the other hand, the learned advocate for the applicant has submitted that in support of contention that Savita was below 16 years, the prosecution has relied on School Leaving Certificate. She has pointed out that said certificate is in respect of one 'Rekha' whereas the name of prosecutrix is Savita. The learned A.P.P. has pointed out that Savita has stated in her evidence that she was also known as 'Rekha' and hence, reliance can be placed on said certificate to show that Savita was below 16 years of age.

4. Thereafter, the learned advocate for the applicant has submitted that the prosecution case that the applicant committed rape on Savita is false one especially looking to the evidence of Doctors who have examined Savita. P.W.12 Dr.Padalkar examined Savita and issued certificate Exh.36. The said certificate discloses absence of injuries on libia, majora and minora and absence of odema and tenderness over private parts of P.W.1 Savita. The learned advocate for the applicant pointed out that the said certificate Exh.36 does

not disclose any positive opinion in respect of sexual intercourse with P.W.1 Savita. She has also pointed out certificate Exh.37 which has been issued by Doctor, which states that no sign of forcible alleged sexual activity was found in respect of the prosecutrix. She has also placed reliance on the evidence of P.W.12 Dr.Padalkar wherein in his cross-examination, he has stated that rape has not been committed on Savita.

5. It is stated on behalf of the applicant that the applicant was on bail pending the trial and this liberty is not misused by him. This statement has not been controverted by the prosecution. Looking to the facts of this case, I am inclined to grant bail to the applicant.

6. The applicant to be released on bail in the sum of Rs.25,000/- with one or two sureties to make up that amount. The applicant shall report once in a month i.e. on first Monday of every month to Pandharpur city Police Station till the disposal of the appeal.

7. Application is disposed of.

[V.K.TAHILRAMANI, J. ]